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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FANCHON BRIANNA CALDWELL, Plaintiff and Respondent, v. JEFFREY G. RANDALL, Defendant and Appellant.	A152427 (San Mateo County Super. Ct. No. FAM00725)

Appellant Jeffrey G. Randall appeals in propria persona, in this ongoing child custody and support matter, arguing that the trial court erred in (1) granting respondent Fanchon Brianna Caldwell's request for pendente lite attorney fees and costs; (2) requiring him to advance the cost of a child custody evaluation, subject to reallocation; (3) granting Caldwell's request for discovery sanctions; (4) finding that California has jurisdiction over his youngest daughter, G.E.C.; and (5) denying his motion to dismiss this matter to allow a pending case in Nevada regarding G.E.C. to proceed. We shall affirm the court's orders.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Randall and Caldwell are the unmarried parents of G.C., born in 2015, and G.E.C., born in 2016.

[1] The parties are familiar with the factual history of this matter. In this opinion, we will briefly summarize the general history of the case, as set forth in our two prior opinions (*San Mateo County Department of Child Support Services v. Randall* (Nov. 6, 2018, A151856) [nonpub. opn.]); *Caldwell v. Randall* (Mar. 29, 2018, A148053 &

On October 15, 2015, in case No. FAM129072, the trial court (Hon. Susan Greenberg) issued an order after hearing granting Randall's motion to quash and dismiss Caldwell's consolidated petitions to establish parental relationship as to G.C. and then unborn G.E.C. after finding that Nevada was the home state of G.C.

On August 12, 2016, the Department of Child Support Services filed a summons and complaint regarding parental obligations as to G.E.C. in case No. FAM00587. The Department requested that the court order Randall to pay Caldwell monthly guideline child support for G.E.C. in the amount of $13,142 per month based on Randall's then income of $250,000 and Caldwell's then income of $1,583 per month.

Meanwhile, on August 25, 2016, the family court in Nevada, which had previously made a temporary order for custody and support as to G.C., found that "it would be an inconvenient forum to address custody [of G.C.] in Nevada under the circumstances and that California is a more appropriate forum. There exists in California an entire life of evidence regarding the parties and their child(ren) and it would be in the child(ren)'s best interest that the California court address custody." The Nevada court stayed the matter on condition that a child custody proceeding be promptly commenced in California.

On August 26, 2016, Caldwell filed a petition for custody and child support with respect to G.C. and G.E.C. in the present case (case No. FAM00725), based on the Nevada court's order. On October 27, 2016, Randall filed a motion to dismiss and quash Caldwell's petition for custody and support based on lack of jurisdiction.

A149738) [nonpub. opn.]), but will focus on the facts relevant to the issues raised in this appeal.

We grant both parties request for judicial notice of our opinion in *Caldwell v. Randall, supra,* A148053 and A149738, and grant Caldwell's request for judicial notice of our opinion in *San Mateo County Department of Child Support Services v. Randall, supra,* A151856. (Evid. Code, § 451, subd. (a).) We deny Randall's request for judicial notice of the docket in *Caldwell v. Randall, supra,* A148053 and A149738 and of two June 22, 2018 Nevada Court of Appeal decisions, which are unnecessary to our resolution of this appeal. (See Evid. Code, § 452, subds. (a), (d).)

On August 30, 2016, in case No. FAM0131885, the trial court (Hon. Richard DuBois) granted Randall's motion to quash and dismiss Caldwell's petition to establish parental relationship, filed as to newborn G.E.C., stating that "[t]his court will not disturb, and will follow [Judge Greenberg's] Order Finding Lack of Jurisdiction, unless directed otherwise by the California Court of Appeal." The court also dismissed the Department's " 'matter on calendar . . . for lack of service.' "[2]

On November 8, 2016, the Department filed, again as to G.E.C., a motion for judgment for parentage, child support, health care, and one-half unreimbursed medical and dental expenses in case No. FAM00587.

On November 10, 2016, Randall filed a complaint to establish parentage, custody, visitation, and child support with respect to G.E.C. in the Nevada family court. The Nevada court dismissed the petition on December 27, 2016.

On November 16, 2016, Randall filed an amended motion to quash and dismiss the Department's complaint regarding parental obligations, based on lack of jurisdiction. On December 7, the court denied the motion, finding that California, not Nevada, had jurisdiction over G.E.C. The court further found that the Department was not a party to the previous case involving G.E.C. (No. FAM0131885), that it was not served with Randall's motion to quash and dismiss, and therefore that it was not subject to dismissal in that case.

On December 16, 2016, Randall filed a motion for reconsideration of the court's (Hon. Richard DuBois) "interim rulings, renewal of motion to dismiss and quash, and for stay of proceedings." In her January 13, 2017 response, Caldwell requested attorney fees and costs, as well as sanctions under Family Code section 271[3] in the amount of $25,000.

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[2] In a March 29, 2018 unpublished opinion, a panel of this Division reversed the trial court orders granting Randall's motions to quash and dismiss Caldwell's petitions to establish parental relationship in the prior cases (Nos. FAM129072 & FAM0131885). (*Caldwell v. Randall, supra*, A148053 & A149738.)

[3] All further statutory references are to the Family Code unless otherwise indicated.

On January 20, 2017, the court denied Randall's motion for reconsideration and also denied Caldwell's request for sanctions "without prejudice to ask for it in the form of attorney's fees at a future hearing."

On February 10, 2017, Family Court Services submitted a report and recommendations to the court, requesting that the parents undergo a private child custody evaluation and that the court make a determination about allocation of the fees for the evaluator.

On February 15, 2017, the court (Hon. Elizabeth M. Hill) found, as to G.E.C., that California had jurisdiction over child support. The court observed that the Nevada court had found that G.E.C. was born in California and had continuously resided in California since birth. The court concluded it had "a basis for exercising personal jurisdiction, given the Nevada court's finding which is entitled to full faith and credit that [G.E.C.] has resided in California her entire life. The court also has subject matter jurisdiction over child support related to [G.E.C.]" The court found, however, that it was precluded from addressing "issues of the court's jurisdiction over [G.E.C.'s] child support during the time period that is embraced by the appeals that are currently pending in the two prior actions that were filed and dismissed, those dismissals being on appeal. So the court's jurisdiction regarding the child support of [G.E.C.] is, at this point, specifically limited to the date of filing of this petition and, more specifically, the date of filing of the request for order wherein [Caldwell's attorney] first requested child support, which is September 6th of 2016."[4]

On February 23, 2017, Caldwell filed a motion to compel responses and production of documents pursuant to a prior request for production of certain financial

[4] The court found that the court in Nevada had issued the only child support order as to G.C., and that order was therefore the controlling order pursuant to Family Code section 5700.207, subdivision (a). This was based on a December 24, 2015 Nevada court temporary order for custody and child support. However, as noted, on August 25, 2016, the Nevada court stayed the matter after finding that Nevada would be an inconvenient forum.

documents originally made to Randall on November 12, 2016. She also requested monetary sanctions in the form of attorney fees and costs, pursuant to section 271 and Code of Civil Procedure section 2031.300, subdivision (c). On April 24, the court denied Randall's related motion to quash discovery.

On May 22, 2017, following a hearing on child support, the court reiterated its finding that it had jurisdiction to adjudicate child support issues involving G.E.C. and ordered Randall to pay Caldwell $4,885 per month in temporary child support for G.E.C.[5] The trial court also granted Caldwell's motion to compel and ordered Randall "to serve code-compliant responses . . . within 30 days." The court also imposed monetary sanctions in the amount of $2,575, as attorney fees and costs.

On August 8, 2017, following a hearing, the court granted Caldwell's request for pendente lite attorney fees in the amount of $50,000, pursuant to section 7605.

On September 13, 2017, the court filed its statement of decision and findings and orders after hearing in which it stated that, to ensure that "it has an unbiased source of information to make permanent custody orders that will serve the children's best interests . . . , the court orders a private child custody evaluation pursuant to [section] 3111. . . . Costs for the evaluation will be ordered advanced by [Randall] subject to reallocation, based on his superior access to liquid funds as demonstrated by the income and expense declaration showing $425,000 in liquid assets."[6]

On September 14, 2017, appellant filed a notice of appeal in the current matter.

On September 15, 2017, the court entered an order appointing a child custody evaluator, pursuant to section 3111 and Evidence Code section 730, and ordering Randall

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[5] In a November 6, 2018 unpublished opinion, we affirmed the trial court's order establishing child support for G.E.C. in the present matter (case No. FAM00725) and in the Department's case (case No. FAM00587). (*San Mateo County Department of Child Support Services v. Randall*, *supra*, A151856.)

[6] The court further stated that it was reserving "jurisdiction to reallocate the costs of the evaluation at or after trial on permanent custody and support orders."

to pay 100 percent of the cost, with the court again stating that it was "reserv[ing] jurisdiction to reallocate the cost of the evaluation between the parties."

On September 20, 2017, the court entered its findings and order after hearing on Caldwell's request for pendente lite attorney fees and costs, ordering Randall to pay $50,000 to Caldwell's attorney, pursuant to section 7605.

DISCUSSION

I. *The Order Granting Pendente Lite Attorney Fees and Costs*

In an abbreviated argument, Randall contends the trial court erred in granting Caldwell's request for pendente lite attorney fees and costs. Specifically, he argues that (1) the court's failure to provide him with sufficient notice or make the findings mandated by section 7605 requires reversal of the fees order, and (2) the court abused its discretion when it ordered him to pay the attorney fees, considering the evidence of his financial challenges.

Section 7605 provides in relevant part: "(a) In any proceeding to establish physical or legal custody of a child or a visitation order under this part, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

"(b) When a request for attorney's fees and costs is made under this section, the court shall make findings on whether an award of attorney's fees and costs is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability,

to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

"(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding." (§ 7605, subds. (a)-(c).)

"[S]ection 7605 does not require the trial court to simply mathematically determine which party has access to more resources and then redistribute those resources. Section 7605 specifically allows the trial court the discretion to determine what is 'reasonably necessary' under the facts and circumstances before it 'for the cost of maintaining or defending the proceeding during the pendency of the proceeding.' . . .

"When considering a request for attorney fees, 'the trial court must determine what is just and reasonable under the circumstances, taking into consideration the parties' needs and ability to pay *and the conduct of each party*.' [Citation.] '[T]he proper legal standard for determining an attorney fee award requires the trial court to determine how to apportion the cost of the proceedings equitably between the parties under their relative circumstances. [Citation.] In making this determination, the trial court has broad discretion in ruling on a motion for fees and costs; we will not reverse absent a showing that no judge could reasonably have made the order, considering all evidence viewed most favorably in support of the order.' [Citations.] A party's 'tactics are relevant to evaluate the relative need-based fees between the parties and support the trial court's decision to [grant or] deny such . . . .' [Citation.]" (*Darab Cody N. v. Olivera* (2019) 31 Cal.App.5th 1134, 1142–1143.)

Here, the court explained its September 20, 2017 order granting Randall's request for $50,000 in pendente lite attorney fees as follows.

First, the court had "already made substantial and extensive findings based on the evidence presented in the context of temporary support regarding the relative financial position of the parties." In its statement of decision, for example, the court had found that Randall had received payments from his prior law firm in 2016 totaling $1,791,665 and had reported an adjusted gross income on his 2015 tax returns of at least $3.5 million.

The court had also stated that, "[i]n general, when it came to questions of residence and financial disclosure, the court found [Randall] to be evasive at best, flatly inconsistent at times, and generally not credible. His income and expense declarations struck the court as more likely to mislead than inform, and at best reflected [his] most aggressive advocacy position rather than actual financial information." The court had ultimately imputed $1.5 million in annual income to Randall for purposes of determining the amount of temporary child support for G.E.C. The court had refused to impute income to Caldwell, after discussing the evidence showing her minimal income and finding that it would not be in the best interests of any of the three children to whom she was primary custodial parent, particularly G.C. and G.E.C., to impute income to her.

In its order granting the request for fees, the court also stated that section 7605 fees "shall ensure that the parties have adequate resources to litigate on an equal playing field. Ms. Caldwell self-represented is not in a position where she is on an equal playing filed in the litigation on this matter. She requires representation. [¶] Then the question that this court has to address is . . . essentially, the relative financial circumstances of the parties, vis-à-vis, their ability to pay fees sufficient to maintain the litigation on an equal footing. [¶] . . . [¶]

"While this court has testimony and documentary evidence from Mr. Randall demonstrating that his income from prior employment had not been forthcoming since September of 2016 and he has had no income from employment, this court's financial findings in the Statement of Decision are equally applicable. This court is operating in a void of reliable information about what assets are available to Mr. Randall from which he has the ability to pay, not only his own expenses that this court noted, but attorney's fees and costs in this litigation.

"This court cannot ignore that as the court records and the argument before the court established today, there has been $90,000 in liquid funds advanced by Mr. Randall in the last 90 days of this litigation. This court does not have any reliable information on Mr. Randall's Income and Expense Declaration about the source of the funds.

"This court finds given the advancements of large amounts of liquid funds, that Mr. Randall has a source of money from which he is able to pay fees. His own, if he chose to incur them; but, certainly, Ms. Caldwell's. And, certainly, the contribution that is being requested in the context of the complexity of the litigation regarding the court's jurisdiction to award child support, an evidentiary hearing on temporary orders for custody and support over the course of more than four full days that have required substantial litigation.

"The court finds that [Caldwell's attorney's] description of his need for a forensic accountant to, essentially, trace the money and an expert on earning capacity and opportunity is amply justified based on the manner in which the temporary support orders were litigated."

As we shall explain, these findings of the court and the evidence set forth above demonstrate that the court neither failed to satisfy the requirements of section 7605 nor abused its discretion.

First, the record reflects that the court made detailed findings regarding the financial circumstances of both parties in the order awarding pendente lite attorney fees and the underlying statement of decision, which was in turn based in large part on the extensive evidence regarding the parties' financial circumstances that was presented at the May 2017 hearing on the petition for custody and child support as to G.E.C. The court thus complied with section 7605's requirement that it "make findings on whether an award of attorney's fees and costs is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties." (§ 7605, subd. (b).) Second, because the evidence *did* "demonstrate disparity in access and ability to pay" (*ibid*.) and because the court reasonably took into account " '*the conduct of each party*' " (*Darab Cody N. v. Olivera, supra,* 31 Cal.App.5th

at p. 1143), it did not abuse its discretion in making granting Caldwell's request for pendente lite attorney fees and costs.[7] (See *id.* at pp. 1142–1143.)

II. *The Orders Requiring Randall to Advance the Cost of a Child Custody Evaluation and Granting Caldwell's Request for Discovery Sanctions*

Randall contends the trial court erred in (1) ordering him to advance the cost of a child custody evaluation, subject to reallocation, and (2) granting Caldwell's request for discovery sanctions in the amount of $2,750.

A.

First, the order for Randall to advance the cost of the child custody evaluation on its face appears to be interlocutory, given the court's statements that "[c]osts for the evaluation will be ordered advanced by [Randall] subject to reallocation" and that it was reserving "jurisdiction to reallocate the costs of the evaluation at or after trial or permanent custody and support orders." As the appellate court explained in *In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1216–1217: "A judgment [or order] is final ' " 'when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.' " ' [Citations.] ' "[W]here anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory" ' and not appealable."

In this case, particularly considering that further judicial action was anticipated on the allocation of the costs of the child custody evaluation, Randall was required to explain the appealability of the order, but has failed to do so. (See Cal. Rules of Court, rule 8.204(a)(2)(B) [an appellant's opening brief must "[s]tate that the judgment appealed from is final, or explain why the order appealed from is appealable"];[8] *Lester v. Lennane*

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[7] This case is factually distinguishable from *In re Marriage of Carlsen* (1996) 50 Cal.App.4th 212, 217–218, the sole case cited by Randall, in which the appellate court found that the trial court's failure to make findings prescribed by section 4072, regarding whether criteria were present to permit application of a hardship deduction in its order modifying child support, was error.

[8] All further rule references are to the California Rules of Court.

(2000) 84 Cal.App.4th 536, 556 ["Where an appeal is taken from an order other than a final judgment, rule 13's [predecessor to rule 8.204(a)(2)(B)] statement of appealability serves multiple purposes," including that "it requires an appellant to make the preliminary and fundamental determination that the order appealed from is, in fact, an appealable order or judgment" and that "it demonstrates both to other parties *and to the Court of Appeal*, before work on the merits of a case is begun, why the order is appealable"].) In the "Statement of Appealability" in his opening brief, appellant merely states that "[a]n order granting a motion for pendente lite attorneys' fees is appealable. [Citation.] The court's denial of Randall's motion to dismiss for lack of jurisdiction regarding [G.E.C.] is procedurally embedded in the court's orders that are the subject of this appeal." No mention is made of the appealability of the order for a child custody evaluation.

We decline to independently determine the appealability of the order regarding allocation of costs for the child custody evaluation on appellant's behalf. (See rule 8.204(a)(2)(B).)

B.

Second, Randall has not addressed the appealability of the court's order granting Caldwell's request for discovery sanctions in the amount of $2,750 in his briefing and, again, we decline to make the appealability determination for him. (See rule 8.204(a)(2)(B); *Lester v. Lennane, supra,* 84 Cal.App.4th at p. 556.) In addition, other than in the introduction and the statement of facts in his opening brief, Randall has not addressed the issue or provided any legal argument in support of his contention that the court erred in ordering him to pay discovery sanctions. (See rule 8.204(a)(1)(B) [each brief must "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument"]; *Clary v. City of Crescent City* (2017) 11 Cal.App.5th 274, 294 [" ' "This court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record" ' "].) In light of Randall's failure to discuss the appealability of the sanctions order or set forth a legal argument in support of his position, we conclude he has not preserved the issue

for appeal. Moreover, even if it were appealable, his failure to provide any supporting legal argument forfeits the issue on appeal.

III. *The Court's Finding that California has Jurisdiction Over G.E.C.*

Randall contends the court erred in finding that California has subject matter jurisdiction over G.E.C.'s case after two prior dismissals for lack of jurisdiction and two pending appeals on that issue. In particular, he asserts that Caldwell failed to show material changed circumstances following the court's July 15, 2016 order finding that California was without jurisdiction as to G.E.C. that would justify her filing another petition for custody and child support on August 26, 2016.

Since Randall filed his opening brief in this appeal, we issued our opinion in his prior appeal (*San Mateo County Department of Child Support Services v. Randall*, *supra*, A151856), in which we rejected this same argument, which was also based on the trial court's finding that it had subject matter jurisdiction over the claims related to G.E.C. Even assuming that Randall may raise the identical claim again now, we reject it for the same reasons we found it to be without merit in our November 6, 2018 opinion, i.e., that Randall's objection in the trial court on this issue solely involved a request that the court make its ruling subject to this court's resolution of the jurisdiction issue in Caldwell's then pending appeal in *Caldwell v. Randall, supra,* A148053 and AA149738. (See *Randall*, *supra*, A151856.) Having now resolved the question of the California court's subject matter jurisdiction as to G.E.C. against Randall both in Caldwell's appeal and again in Randall's prior appeal, his repetitive claim in this appeal cannot succeed.[9]

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[9] Moreover, as the trial court found in its statement of decision, regardless of whether the prior trial court decisions were correct at the time they were made, "[t]he jurisdictional question presented to this court is: did this court have subject matter jurisdiction over custody, support, and parentage of [G.E.C.] on August 12, 2016 and August 26, 2016 [when the petitions for support in this case were filed]? This court's answer to that question will have no impact on the Court of Appeal's determinations of the correctness of the prior dismissals. This court has specifically limited its findings of support jurisdiction for [G.E.C.] to the period from August 12, 2016 forward." (See *In re A.C.* (2017) 13 Cal.App.5th 661, 668 ["Subject matter jurisdiction over a dependency action or other child custody proceeding either exists or does not exist at the time the

IV. *The Denial of Randall's Motion to Dismiss*

Randall contends the court erred in denying his motion to dismiss this matter to allow a pending case in Nevada regarding G.E.C. to proceed.

Randall's sole argument on this point is as follows: "The trial court erred in failing to follow the 2015 and 2016 orders, and promptly dismiss Caldwell's case regarding [G.E.C.]. Randall's Nevada case regarding paternity and support for [G.E.C.] should have been permitted to proceed unencumbered by the trial court's errs [*sic*]. Caldwell answered the complaint in Nevada, thereby waiving any objections to support jurisdiction in Nevada. As such, the Nevada action regarding [G.E.C.] was the only paternity/support case properly filed regarding [G.E.C.] with jurisdiction to proceed."

This language is nearly identical to the language Randall used in the briefing of the same claim in his prior appeal, which we addressed in our November 2018 opinion, finding that the issue was not preserved for appeal due to the failure to support it with any legal authority. (*San Mateo County Department of Child Support Services v. Randall*, *supra*, A151856.) We now again find that Randall has not preserved this issue for appeal due to his failure to support the claim with any legal authority. (See *Clary v. City of Crescent City*, *supra*, 11 Cal.App.5th at p. 294; rule 8.204(a)(1)(B).)

DISPOSITION

The trial court's orders are affirmed. Costs on appeal are awarded to respondent Fanchon Brianna Caldwell.

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petition was filed"]; see also Code Civ. Proc., § 916, subd. (a) ["the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order"].)

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Kline, P.J.

We concur:

_____
Stewart, J.

_____
Miller, J.

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